

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1660 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

ILESH J CHUDGAR

Versus

UNION OF INDIA

Appearance:

MR MAGANBHAI BAROT with MRS KRISHNA V BAROT
for Petitioner
MR BHARAT T RAO for Respondent No. 1
MR SS PATEL AGP for Respondent No. 2, 3, 4

CORAM : MISS JUSTICE R.M.DOSHIT
Date of decision: 02/07/1999

ORAL JUDGEMENT

Heard learned advocates for the respective
parties.

2. The petitioner challenges the order of preventive detention dated 7th April, 1998 made by the District Magistrate, Vadodara under the powers conferred upon him under Sub-section 2 (a) of Section 3 of the Prevention of Blackmarketing & Maintenance of Supplies of Essential Commodities Act, 1980 [hereinafter referred to as, 'the Act']. Though the order was made as far back as on 7th April, 1998, the petitioner was successful in avoiding the service for a long time. Ultimately, he surrendered to the Detaining Authority on 26th February, 1999.

3. One Kamlesh Kumar Manilal Shah holds a Dealership in Kerosene and runs a business in the name and style of Messrs. Mahavir Petroleum at Vadodara. In course of inspection carried out on 27th March, 1998, 30th/31st March, 1998 and 1st April, 1998 by the Directorate of Civil Supplies, several irregularities were noticed by the raiding party. It appears that several documents were seized and under communication dated 7th April, 1998, the seized material was sent to the District Magistrate, Vadodara with a request to take appropriate action against said Kamlesh Kumar Shah, the proprietor of Messrs. Mahavir Petroleum and the present petitioner Ileshbhai Jayantilal Chudghar, an employee of Messrs. Mahavir Petroleum, under the Act. It appears that the said communication alongwith accompanying documents (pp 1-403) was received by the District Magistrate on the same date i.e. on 7th April, 1998 and the impugned order of detention was also made on 7th April, 1998. In the counter affidavit made by the District Magistrate, it is categorically submitted that the District Magistrate had perused the entire record and having recorded his subjective satisfaction, had issued the impugned order of detention. However, the assertion made by the District Magistrate is ex facie unbelievable. It is manually impossible for any person to peruse 403 pages, to apply his mind to the contents of the said documents and to record subjective satisfaction before making the order of detention under the Act. Besides, this is all the more apparent from the fact that though the detention order has been made on 7th April, 1998, the grounds of detention are prepared on 8th April, 1998. There is nothing on the record that the grounds of detention were framed or did exist on 7th April, 1998. It is, therefore, obvious that the impugned order has been made without application of mind and at the dictate of the Directorate of Civil Supplies, as it is apparent from the communication dated 7th April, 1998. The action of the detaining authority in not applying his mind to the contents of the matter and to record his subjective

satisfaction would amount to abdication of the statutory power conferred under Section 3 of the Act. The action taken by the District Magistrate as well as the subjective satisfaction recorded by him are vitiated. In the circumstances, the petitioner's continued detention is not warranted.

For the aforesaid reasons, the petition is allowed. The impugned order dated 7th April, 1998 is quashed and set-aside. Rule is made absolute. The petitioner, unless is required to be detained in some other matter, be released forthwith.

Prakash*